

FILED BY MC D.C.

AO 241 (Rev. 09/17)

APR 21 2023

ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMIPETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District: <u>Southern Florida</u>
Name (under which you were convicted): <u>Abdelaziz Hamze</u>	Docket or Case No.:	
Place of Confinement: <u>Apalachee C.I.</u>	Prisoner No.: <u>L81379</u>	
Petitioner (include the name under which you were convicted) <u>Abdelaziz Hamze</u>	Respondent (authorized person having custody of petitioner) <u>State</u>	
The Attorney General of the State of: <u>Florida</u>		

PETITION

1. (a) Name and location of court that entered the judgment of conviction you are challenging:

17th Judicial Circuit in and for Broward County,
Florida

- (b) Criminal docket or case number (if you know):

07010490 (F10A)

2. (a) Date of the judgment of conviction (if you know):

March 23, 2009

- (b) Date of sentencing:

May 1, 2009

3. Length of sentence:

30 years

4. In this case, were you convicted on more than one count or of more than one crime?



Yes



No

5. Identify all crimes of which you were convicted and sentenced in this case:

1. Vehicular Homicide2. Leaving Scene of Accident3. Damage to Personal property

6. (a) What was your plea? (Check one)



(1)

Not guilty



(3)

Nolo contendere (no contest)



(2)

Guilty



(4)

Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to?

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☒ Yes ☐ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court: 17th Circuit of Broward County

(b) Docket or case number (if you know): 07010490 CF10A

(c) Result: Denied

(d) Date of result (if you know): May 2009

(e) Citation to the case (if you know):

(f) Grounds raised: 1. Ineffective assistance of Counsel in advising defendant not to Testify. 2. Ineffective Assistance of Counsel in failing to request self-defense & non-deadly force jury instructions. 3. Denial of self-representation and a Forester hearing by trial Court. 4. Ineffective Counsel in excessive and inappropriate personal comments on the victim.

(g) Did you seek further review by a higher state court? ☒ Yes ☐ No

If yes, answer the following:

(1) Name of court: Fourth District Court of Appeal

(2) Docket or case number (if you know): 4D09-2089

(3) Result: PCA Affirmed

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(4) Date of result (if you know):

February 2011

(5) Citation to the case (if you know):

N/A

(6) Grounds raised:

1. Ineffective Assistance of trial Counsel in not requesting instructions on non-deadly use of force.
 2. Double jeopardy, truly inconsistent verdict
 3. Denial of self-representation without a faretti hearing.

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

17th Circuit

(2) Docket or case number (if you know):

07010490CF10A

(3) Date of filing (if you know):

October 2013

(4) Nature of the proceeding:

3.850

(5) Grounds raised:

1. Ineffective Assistance of Counsel in:
 Advising defendant not to testify &
 2. Unnecessary personal slander of the victim.
 3. Truly inconsistent verdict
 4. Trial Court's error in denying defendant self-representation & a Faretti hearing.
 5. Error in ruling self-defense inadmissible and excluding defendant's statement upon arrest, and favorable evidence.
 6. Denial of Jury Instructions on non-deadly use of force

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

August 2015 - Denied, PCA Affirmed

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(8) Date of result (if you know):

August 20, 2015

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

17th Circuit Court in Broward County

(2) Docket or case number (if you know):

07010490 (F10A)

(3) Date of filing (if you know):

2015

(4) Nature of the proceeding:

3.850

(5) Grounds raised:

1. Ineffective Assistance of trial Counsel
2. Exoneration of evidence favorable to defendant
3. Double jeopardy on counts II & III convictions
4. Biased Media Coverage causing a biased trial
5. Denial of self-representation and a Faretta hearing
6. Denial of Jury Instructions on non-lethal force
7. Error in ruling defendant's statement upon arrest and his self-defense argument inadmissible unless he testifies.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

Denied

(8) Date of result (if you know):

December 13, 2021

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☐ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☒ Yes ☐ No(2) Second petition: ☒ Yes ☐ No(3) Third petition: ☐ Yes ☐ No(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

The Court erred in rendering petitioner's statement and self-defense argument inadmissible unless he testifies in trial.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel mentioned the statement obtained upon petitioner's arrest and the state objected. The court sustained stating that defense counsel may not even refer to that statement anymore (T336). This statement was the ground that the state used for the very indictment in this case and, without it, the state lacks a prima-facie case to charge petitioner and try him.

(b) If you did not exhaust your state remedies on Ground One, explain why:

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(c) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

3.850

Name and location of the court where the motion or petition was filed:

17th Circuit, Florida

Docket or case number (if you know):

07010490 (FIOA)

Date of the court's decision:

Dec. 13, 2021

Result (attach a copy of the court's opinion or order, if available):

Denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

4th DCA, Florida

Docket or case number (if you know):

4D22-0134

Date of the court's decision:

June 2, 2022

Result (attach a copy of the court's opinion or order, if available):

PCA Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One:

GROUND TWO:

The state falsely stated that petitioner was driving illegally and exonerated evidence of Tag, Insurance that's favorable

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Petitioner was driving a legally registered and insured van under the name of Zakaria Aboline, with his permission.

See Exhibit A, Florida Traffic Crash Report, indicating that the vehicle was registered legally and insured under the name of Zakaria Aboline.

The state during trial explicitly falsified this fact by stating that petitioner had no Tag, registration or insurance.

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes

☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

3.850

Name and location of the court where the motion or petition was filed:

17th Circuit, Florida

Docket or case number (if you know):

07010490 (FLOA)

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Date of the court's decision:

December 13, 2021

Result (attach a copy of the court's opinion or order, if available):

Denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

4th DCA, Florida

Docket or case number (if you know):

07010490(CF10A/4D22-0134

Date of the court's decision:

June 2, 2022

Result (attach a copy of the court's opinion or order, if available):

PCA Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two :

GROUND THREE: The Court erred in trying petitioner on Murder 2 & vehicular homicide & leaving scene at the same time.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The jury was presented with 3 serious charges regarding a single infraction for which only one charge could be convicted on. This was confusing to the jury and prejudicial to petitioner because it aggravated the offense in their view, as well as the state's determination to convict petitioner, and increased the probability of a conviction and reduced the chances of a full acquittal on all counts, which would have been much higher with only one charge.

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?



Yes



No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

3.850

Name and location of the court where the motion or petition was filed:

17th Circuit, Florida

Docket or case number (if you know):

07010490 CF10A

Date of the court's decision:

Dec. 13, 2021

Result (attach a copy of the court's opinion or order, if available):

Denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

4th DCA, Florida

Docket or case number (if you know):

4D 92-134

Date of the court's decision:

June 2, 2022

Result (attach a copy of the court's opinion or order, if available):

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:**GROUND FOUR:**

Trial Counsel was ineffective in advising petitioner not to testify & in not requesting instructions on non-deadly & justifiable force.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Trial Counsel threatened petitioner if he testified during trial that he would not assist him anymore and said that if "you testify, you just lost your trial." This was unprofessional and not strategically sound considering that petitioner is well educated and could effectively articulate his case and plead innocence as was proven in an unsolicited statement upon arrest, which trial counsel was aware of. (T 335, L 5)

(b) If you did not exhaust your state remedies on Ground Four, explain why:

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☒ Yes☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed:

17th Circuit, Florida

Docket or case number (if you know):

07010490 CF10A

Date of the court's decision:

December 13, 2021

Result (attach a copy of the court's opinion or order, if available):

Denied

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☒ Yes☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☒ Yes☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

4th DCA, Florida

Docket or case number (if you know):

4D22-0134

Date of the court's decision:

June 2, 2022

Result (attach a copy of the court's opinion or order, if available):

PCA Affirmed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

- (e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

Continue on pg 12a

GROUND FIVE : Petitioner was not read his Miranda rights upon arrest nor in the aftermath thereof. Therefore, the detectives had no authority to obtain a statement from him nor to indict and charge him at all, and the State lacks a prima-facie case on all the charges.

- Supporting facts: No where does the record reflect that petitioner was read his Miranda rights. And the case report by the arresting officers and detectives doesn't state anywhere that the petitioner was Mirandized.

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☒ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

S.D. Fla., Habeas Corpus.
Denied and appealed to the 11th Circuit Court
of Appeals in Georgia, which Affirmed.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Jeffrey M. Voluck

(b) At arraignment and plea:

Same

(c) At trial:

Same

(d) At sentencing:

Same

(e) On appeal:

James McIntire (on direct appeal)

(f) In any post-conviction proceeding:

Fred Haddad (on the 1st

3.850)

(g) On appeal from any ruling against you in a post-conviction proceeding:

Self, pro-se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Reverse the conviction
on all charges.

or any other relief to which petitioner may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on 4.11.2023 (month, date, year).

Executed (signed) on 4.11.2023 (date).

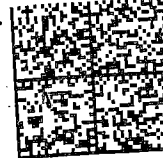
PROVIDED TO APALACHEE
CORRECTIONAL INSTITUTION
ON 4/12/23
FOR MAILING



Signature of Petitioner

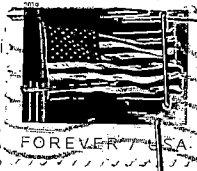
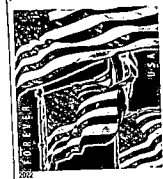
If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

Abdelaziz Hamze, # L81379
Apalachee C.I.
35 Apalachee Drive
Sneads, FL 32460-4255



US POSTAGE PHILIP BOWES

ZIP 32460 \$001.35⁰
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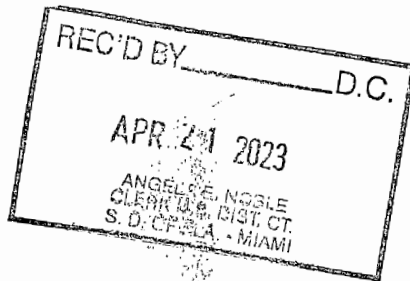


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US DISTRICT COURT

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A.H.

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